

July 27, 1994  
REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

ITEM 120, COUNCIL DOCKET OF JUNE 20, 1994 - ROUTE SLIP REGARDING  
ADDITIONAL FUNDS FOR THE FIRE DEPARTMENT SUPPORT SERVICES  
COMPLEX

At the City Council meeting of June 20, 1994, our office was asked to return with a response concerning why a lawsuit was not initiated regarding damages the City incurred because of poor workmanship at the Fire Communications Center. A copy of an internal memorandum dated June 20, 1994 (copy attached), from the San Diego City Fire Fighters Union (Local 145, I.A.F.F.) was forwarded to Councilmember Judy McCarty with unsubstantiated conclusions that the City Attorney's office refused to address construction problems regarding work completed by the contractor at the Fire Communications Center. The memorandum alleged that the construction problems at the Fire Communications Center amounted to at least \$368,000 since the estimate did not include repairing the leaking roof. Specifically, our office was asked to respond to the allegations in the memorandum.

The memo's assertion that this office refused to take remedial action is factually inaccurate. Prior to the June 20, 1994 City Council meeting, no remedial action of this office had been requested by the Fire Department. Hence, the first time our office became aware that there was a construction problem at the Fire Communications Center was on June 20, 1994. Based on the information provided on June 20th, and pursuant to Council request, our office met with the Fire and Engineering and Development Departments to gather specific information regarding the Fire Communications Center. It was determined, based upon those meetings that there is no viable defendant to sue. The contractor's license of EVH, Inc., the prime contractor, expired on October 25, 1990 and the firm has no attachable assets. The installer of the exterior panels that now need replacing, R.K. Burner - Sheet Metal, Inc., declared bankruptcy in August of 1993. The bond utilized for this project has since expired. The warranties that apply to this project are only worthwhile if there is a viable defendant.

Also, although it was indicated that at least \$368,000 was needed to repair the Fire Communications Center, the transfer of \$53,790, asked for and approved on June 20, 1994 by Resolution No. R-284071, indicates in the supporting information that the requested sum is sufficient to correct the defects in the Fire Communications Building. The \$250,000 estimated for the repair of the air conditioning system (30T chiller) is not a repair but is properly classified as an upgrade of the air conditioning system not contemplated by the contract. Consequently, the City has no legal basis to hold the contractor responsible for that item. We are advised that the remaining items of repairing the leaking roof and sealing the side panels can be addressed with the approved transfer of \$53,790 from CIP No. 33-88.0 to CIP No. 33-069.0. The problems solved by installing french drains we understand are addressed through the proper sealing of side panels and are included within the allocated monies.

Lastly, it is only realistic to mention that this office has suffered a serious decrease in funding as expressed in our Report to Mayor and Council on July 22, 1994. As staff reductions continue, the legal work required of this office must be prioritized and the initiation of plaintiff's cases for relatively small amounts cannot be done.

In conclusion, lack of viable defendants, expiration of the surety, relatively small exposure and reduced staff all mitigate against initiation of a recovery action. In the future, earlier notice of such defects can lead to compensation because of viable contractors and/or enforceable surety provisions.

Respectfully submitted,

JOHN W. WITT

City Attorney

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Attachment

RC-94-31

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